

DIVISION I

CACR06-1214

WILLIE D. COLEMAN

MAY 30, 2007

APPELLANT

v.

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT
[CR2005-4700]

STATE OF ARKANSAS

APPELLEE

HONORABLE WILLARD PROCTOR JR.,
JUDGE

AFFIRMED

A Pulaski County jury convicted appellant, Willie Coleman, of three counts of aggravated robbery, three counts of kidnapping, three counts of theft of property, and one count of residential burglary. He was sentenced to a total of seventy years' imprisonment in the Arkansas Department of Correction. His sole argument on appeal is that because the State offered insufficient proof of his identity, the trial court erred in declining to direct a verdict in his favor. We find no error and affirm.

During the early morning hours of September 18, 2005, twenty-seven year old Ben Cleaves, his wife, his infant daughter, and his mother, were all awakened by two armed men that entered their home. Ms. Susan Cleaves, Ben Cleaves's mother, who was sleeping on the couch in the den, was awakened first as the two men entered the house. She observed that they both had guns. She testified at trial that she and appellant "locked" eyes "for several seconds."

One of the intruders, a man later identified as the appellant, entered Ben Cleaves's bedroom where he was sleeping with his wife and baby and turned on the light. With a gun pointed to his face, Ben told the intruder where his wallet was located, and Ben was then instructed to lie face-

down on the bed. Ben testified that he got an approximate twenty to thirty-second look at appellant's face. Appellant was wearing a blue hat (the Hurley cap) that had been hanging on Ben's bed post, a light colored handkerchief around the bottom of his face, and dark pants or shorts.

Approximately thirty minutes later, Susan Cleaves and the second intruder then entered the bedroom, as she was also instructed to enter the bedroom and lie face-down on the bed with her son and his family. Ben testified that he also told the intruders that his wife's purse was on the floor beside the bed, and they rummaged through her purse. The intruders continued to rummage through the rest of the house. As they did, Ben testified that one could hear them breaking and scattering items throughout the house.

Ben testified that they were face-down on the bed for around forty-five minutes and then were moved to the upstairs bathroom for around fifteen to twenty minutes, for a total of about an hour. After being in the bathroom for approximately twenty minutes, the house became quiet and they could no longer hear any noises or voices. Ben then decided it was safe to exit, and he immediately called 911. He testified that the house "was trashed, stuff everywhere."

A few days after the incident, police showed Ben a photo spread. Ben testified that he was ninety-nine percent sure that the person he picked out of the photo line-up was the person wearing the Hurley cap and white handkerchief. In court, Ben and Susan Cleaves both identified appellant as one of the men that entered their home that night. Susan Cleaves testified at trial that "[she] was very surprised how sure I was when I saw his picture and his photo." She testified that on the photo line-up form, it said "look alike." She had no doubt that appellant was the one that was in her house that night and that on a scale of one to ten, she felt that her identification of appellant was a ten. She stated that she "will never forget that face."

During the investigation of the incident on September 18, 2005, Officers Finkelstein and

Holloway were looking around in an alley way behind the Cleaves's home. They noticed trash and items scattered outside on the ground and inside the neighbor's vehicle, which was parked fifteen to twenty feet from the Cleaves's fence. The neighbor's name was Amanda Bailey. Amanda testified at trial that the police woke her early that morning to question her about the items scattered in and around her vehicle. The officers took fingerprints from the passenger-side door of the vehicle, and the prints were identified as belonging to appellant. When asked at trial if she knew why his fingerprints would be on her vehicle, Amanda testified that she did not know appellant, that she had never seen him before, and that there would be no reason for his fingerprints to be there.

At trial, appellant admitted to searching through Amanda's vehicle the night of September 18, 2005, and admitted that those were in fact his fingerprints found on her vehicle. He explained he was in the vicinity of her vehicle that night because he was at a party at a friend's home that was located a few doors down from Amanda's home. While at the party, appellant's friend asked him to "go out to the truck and get the CDs" out of his vehicle. Appellant stated that he was unsure which vehicle belonged to his friend, and he searched through several vehicles, including Amanda's vehicle, to find his friend's CDs. When asked if anyone could verify that he was at the party that night, appellant responded that there was not, but appellant denied the fact that he broke into the Cleaves's home that night.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Atkinson v. State*, 347 Ark. 336, 64 S.W.3d 259 (2002). When reviewing a challenge to the sufficiency of the evidence we view the evidence in the light most favorable to the State; the test for determining sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial; substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture; only evidence supporting the verdict will be considered;

when a challenge to sufficiency is reviewed, the conviction will be affirmed if there is substantial evidence to support it. *O'Neal v. State*, 356 Ark. 674, 158 S.W.3d 175 (2004); *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

Appellant asserts that the evidence was insufficient to prove he was the perpetrator of the crimes of kidnapping, aggravated robbery, theft of property, and residential burglary. He specifically asserts that both the pre-trial and in-court identifications, along with the fingerprint evidence, were insufficient to prove his identity. His argument has no merit. The identification of the defendant as the perpetrator of the crime is an element of every criminal case. *Stewart v. State*, 88 Ark. App. 110, 195 S.W.3d 385 (2004). Our supreme court has specifically stated that “an element to be proved in every case is that the person who stands before the court in the position of the defendant is the one whom the indictment or information accuses and to whom the evidence is supposed to relate.” *Womack v. State*, 301 Ark. 193, 198, 783 S.W.2d 33, 36 (1990). However, a specific in-court identification is not required and the identification of a defendant can be inferred from all the facts and circumstances that are in evidence. *Id.* If an in-court identification is presented as evidence against the appellant, the credibility of a witness’s in-court identification of a defendant as the guilty party is a matter for the trier-of-fact to determine. *See Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). In this case, there were two in-court identifications. In both instances, the victims testified with confidence that appellant was the one that broke into their home on September 18, 2005. First, Ben identified appellant at trial, stating specifically that “[t]here is not any doubt in my mind as I sit here today that this defendant is the person who broke into my house and put that gun on me and my family that night. No, no doubt whatsoever.” Moreover, Susan Cleaves identified appellant at trial, stating that “[t]here is no doubt that this is who had been in my house that night. No doubt in my mind once I’ve seen him that this was who was in my house that night.”

Under these facts, there was clearly sufficient evidence to identify appellant and to support his convictions.

In addition, appellant himself admitted to being in the vicinity in which the crimes occurred on September 18, 2005. Although there was no one to corroborate his story, appellant testified that he was at a party a few houses away from Amanda's. He attempted to explain why his fingerprints were found on Amanda's vehicle that night by stating that he entered her vehicle that night while looking for a friend's CDs. Appellant, however, denied that he was the person that entered the Cleaves's home and robbed them. This court does not weigh the credibility of the witnesses. *Clem v. State*, 351 Ark. 112, 90 S.W.3d 428 (2002). The trier of fact is not required to believe the testimony of any witness, especially that of the accused, since he is the person most interested in the outcome of the proceedings. *Cherry v. State*, 79 Ark. App. 274, 86 S.W.3d 407 (2002) (citing *Branscum v. State*, 345 Ark. 21, 43 S.W.3d 148 (2001)). Clearly, the jury found appellant's explanation of his whereabouts on September 18, 2005, to be less than truthful. Therefore, we find that the testimony presented at trial, when viewed in the light most favorable to the State, clearly establishes that there was sufficient evidence to support appellant's convictions.

Affirmed.

GLOVER and MILLER, JJ., agree.